

Fishery Conservation and Management

§ 648.79

telephone as soon as the loss or theft is discovered and in writing within 24 hours. Thereafter, the reported tags shall no longer be valid for use under this part.

(f) *Replacement.* Lost or stolen tags may be replaced by the Regional Administrator if proper notice of the loss is provided by the person to whom the tags were issued. Replacement tags may be purchased from the Regional Administrator or a vendor with a written authorization from the Regional Administrator.

(g) *Transfer.* See § 648.74(b)(2).

(h) *Presumptions.* Surfclams and ocean quahogs found in cages without a valid state tag are deemed to have been harvested in the EEZ and to be part of an individual's allocation, unless the individual demonstrates that he/she has surrendered his/her Federal vessel permit issued under § 648.4(a)(4) and conducted fishing operations exclusively within waters under the jurisdiction of any state. Surfclams and ocean quahogs in cages with a Federal tag or tags, issued and still valid pursuant to this section, affixed thereto are deemed to have been harvested by the individual allocation holder to whom the tags were issued under the provisions of § 648.77(b) or transferred under the provisions of § 648.74(b).

§ 648.78 Maine mahogany quahog zone.

(a) *Landing requirements.* (1) A vessel issued a valid Maine mahogany quahog permit pursuant to § 648.4(a)(4)(i), and fishing for or possessing ocean quahogs within the Maine mahogany quahog zone, must land its catch in the State of Maine.

(2) A vessel fishing under an individual allocation permit, regardless of whether it has a Maine mahogany quahog permit, fishing for or possessing ocean quahogs within the zone, may land its catch in the State of Maine, or, consistent with applicable state law in any other state that utilizes food safety-based procedures including sampling and analyzing for PSP toxin consistent with those food safety-based procedures used by the State of Maine for such purpose, and must comply with all requirements in §§ 648.74 and 648.77. Documentation required by the state and other laws and regulations applicable to food safety-based procedures must be made available by federally permitted dealers for inspection by NMFS.

(b) *ACT monitoring and closures*—(1) *Catch quota.* (i) The ACT for harvest of mahogany quahogs from within the

Maine mahogany quahog zone is 100,000 Maine bu (35,239 hL). The ACL may be revised annually within the range of 17,000 and 100,000 Maine bu (5,991 and 35,239 hL) following the procedures set forth in §§ 648.72 and 648.73, if applicable.

(ii) All mahogany quahogs landed for sale in Maine by vessels issued a Maine mahogany quahog permit and not fishing for an individual allocation of ocean quahogs under § 648.74 shall be applied against the Maine mahogany quahog ACT, regardless of where the mahogany quahogs are harvested.

(iii) All mahogany quahogs landed by vessels fishing in the Maine mahogany quahog zone for an individual allocation of quahogs under § 648.74 will be counted against the ocean quahog allocation for which the vessel is fishing.

(iv) The Regional Administrator will monitor the ACT based on dealer reports and other available information, and shall determine the date when the ACT will be harvested. NMFS shall publish notification in the FEDERAL REGISTER advising the public that, effective upon a specific date, the Maine mahogany quahog quota has been harvested, and notifying vessel and dealer permit holders that no Maine mahogany quahog quota is available for the remainder of the year.

(2) *Maine Mahogany Quahog Advisory Panel.* The MAFMC shall establish a Maine Mahogany Quahog Advisory Panel consisting of representatives of harvesters, dealers, and the Maine Department of Marine Resources. The Advisory Panel shall make recommendations, through the Surfclam and Ocean Quahog Committee of the MAFMC, regarding revisions to the annual quota and other management measures.

[76 FR 60625, Sept. 29, 2011]

EFFECTIVE DATE NOTE: At 76 FR 60625, Sept. 29, 2011, § 648.78 was added, effective October 31, 2011.

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a) *Within season management action.* The MAFMC may, at any time, initiate action to add or adjust management measures within the Atlantic Surfclam and Ocean Quahog FMP if it finds that

action is necessary to meet or be consistent with the goals and objectives of the plan.

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; OY range; suspension or adjustment of the surfclam minimum size limit; and changes to the Northeast Region SBRM (including the CV-based performance standard, the means by which discard data are collected/obtained, fishery stratification, reports, and/or industry-funded observers or observer set-aside programs). Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

(2) *MAFMC recommendation.* After developing management actions and receiving public testimony, the MAFMC shall make a recommendation to the Regional Administrator. The MAFMC's recommendation must include supporting rationale, if management measures are recommended, an analysis of impacts, and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the MAFMC recommends that the management measures should be issued as a final rule, it must consider at least the following factors, and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether the regulations would have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the MAFMC's recommendation includes adjustments or additions to management measures and after reviewing the MAFMC's recommendation and supporting information:

(i) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (a)(2) of this section, the measures will be issued as a final rule in the FEDERAL REGISTER.

(ii) If NMFS concurs with the MAFMC's recommended management measures and determines that the recommended management measures should be published first as a proposed rule, the measures will be published as a proposed rule in the FEDERAL REGISTER. After additional public comment, if NMFS concurs with the MAFMC recommendation, the measures will be published as a final rule in the FEDERAL REGISTER.

(iii) If NMFS does not concur, the MAFMC will be notified in writing of the reasons for the non-concurrence.

(4) *Emergency actions.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

(b) [Reserved]

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